

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

PROPOSED THEORY OF DEFENSE INSTRUCTION

Defendant Hatem Naji Fariz, by and through undersigned counsel, respectfully submits the following proposed theory of defense instruction, to be inserted into the jury instructions provided to the jury at the end of the case. *See United States v. Ruiz*, 59 F.3d 1151, 1154 (11th Cir. 1995) (“A criminal defendant has the right to have the jury instructed on [his] theory of defense, separate and apart from instructions given on the elements of the charged offense A trial court may not refuse to charge the jury on a specific defense theory where the proposed instruction presents a valid defense and where there has been some evidence adduced at trial relevant to that defense.”); *id.* (“The district court’s refusal to deliver a requested instruction constitutes reversible error only if the instruction ‘(1) is correct, (2) is not substantially covered by other instructions which were delivered, and (3) deals with some point in the trial so ‘vital’ that the failure to give the requested instruction seriously impaired the defendant’s ability to defend.’”).

**“With the Specific Intent to Further the Unlawful Activities” as Provided in
Instructions Nos. 26, 27, 28, 32, 33, 34, 35, and 36**

You have heard the phrase “with the specific intent to further the unlawful activities” of the Palestinian Islamic Jihad-Shiqaqi Faction, Abd Al Aziz Awda, Fathi Shiqaqi, or Ramadan Shallah.

You are instructed that the First Amendment guarantees an individual’s right to associate with other individuals, groups, or organizations, even with individuals, groups, or organizations that may advocate, conduct, or engage in illegal activity.¹ Thus, even though the government has designated a group or an individual as a terrorist, a person may still associate or affiliate with the group or individual. The charges in this case do not prohibit merely being a member of a certain group or organization, including a designated foreign terrorist organization or specially designated terrorist, or associating with other individuals who are members of such groups. The charges also do not prohibit being sympathetic to the beliefs or goals of such a group, or expressing those sympathies to others.

As you consider Instructions Numbers 26, 27, 28, 32, 33, 34, 35, and 36, remember that the Government must prove that the Defendant acted with the specific intent to further the unlawful activities of the group or individual charged.² In this instance, the “unlawful

¹ See *Boy Scouts of America v. Dale*, 530 U.S. 640, 647-48 (2000); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982); *Buckley v. Valeo*, 424 U.S. 1, 25 (1976); *Healy v. James*, 408 U.S. 169, 181 (1972); *NAACP v. Alabama*, 357 U.S. 449, 460 (1958).

² See, e.g., *Claiborne Hardware Co.*, 458 U.S. at 916-17; *Healy v. James*, 408 U.S. 169, 186 (1972); *Aptheker v. Secretary of State*, 378 U.S. 500 (1964); *Scales v. United States*, 367 U.S. 203 (1961); *Noto v. United States*, 367 U.S. 290 (1961); *Sawyer v. Sandstrom*, 615 F.2d 311, 317 (5th Cir. 1980); *In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994).

activity” is alleged to mean [murder, maiming, and extortion]. For example, while the charges allege that one or more of the Defendants provided or conspired to provide material support and resources and funds to the Palestinian Islamic Jihad-Shiqaqi Faction, you cannot find a Defendant guilty unless, in addition to the other elements, the government proved that the Defendant had the specific intent to further the unlawful activities of the Palestinian Islamic Jihad-Shiqaqi Faction. If you find that the government did not prove beyond a reasonable doubt that the Defendant had the specific intent to further the unlawful activities of the designated group or individuals, or if you find that the government failed to prove beyond a reasonable doubt that the Defendant had something other than lawful intentions, such as charity, then you must find that the Defendant did not intend to further the unlawful activity of the group.

Free Speech and Publication

You have also heard the speech of one or more Defendants in this case. While you may consider a Defendant’s words in your determination of the charges in this case, you are specifically instructed that the First Amendment’s freedom of speech protects an individual’s or a group’s right to express and advocate their beliefs. The First Amendment protects even speech advocating the use of force or violation of law so long as the speech is not directed at inciting or producing imminent lawless action and is not likely to incite or produce such

action.³ “Imminent” means about to occur at any moment or impending.⁴ An individual’s speech expressing a view as to past acts of violence or unlawful activity is also protected under the First Amendment.

Respectfully submitted,

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³ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

⁴ Webster’s II New Riverside University Dictionary (1994).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo
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Assistant Federal Public Defender